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Right of peoples to self-determination

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Report of the Secretary General

Summary

In its resolution 62/144, the General Assembly requested the Secretary-General to report to it at its sixty-third session on the question of the universal realization of the right of peoples to self-determination. The present report has been prepared in accordance with that request. It contains a summary of the developments relating to the consideration of this subject by the Human Rights Council and outlines the relevant jurisprudence of the Human Rights Committee on the treaty-based human rights norms relating to the realization of the right of peoples to self-determination.

* A/63/150.

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I. Introduction

1. In its resolution 62/144, the General Assembly requested the Human Rights Council to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation, and requested the Secretary-General to report on this question to the Assembly at its sixty-third session. The present report is prepared pursuant to that request.

2. The report contains a summary of the developments relating to the consideration of this subject by the Human Rights Council at its sixth special session and at its sixth, seventh and eighth regular sessions. It also outlines the recent concluding observations of the Human Rights Committee, based on its consideration of the periodic reports submitted by the States parties to the International Covenant on Civil and Political Rights in respect of the implementation of the right to self-determination guaranteed in article 1 of the Covenant.

II. Consideration of the question of the realization of the right of peoples to self-determination by the Human Rights Council

3. On 20 September 2007, at the sixth session of the Human Rights Council, the President of the Council and the Deputy United Nations High Commissioner for Human Rights, on behalf of the High Commissioner for Human Rights, reported on their efforts towards the implementation of Council resolutions S-1/1 and S-3/1, dealing with the right to self-determination of the Palestinian people, and on the compliance of Israel, the occupying Power, with these two resolutions, as requested by the Council in its resolution OM/1/2 entitled Human rights situation in the Occupied Palestinian Territory: follow-up to Human Rights Council resolutions S-1/1 and S-3/1. Following the debate on the subject, the Council adopted resolution 6/18, in which it reiterated its request to the President of the Human Rights Council and the High Commissioner to report to the Council at its next session on their efforts for the implementation of the above-mentioned resolutions (see also para. 9 below).

4. The Council also considered the question of religious and cultural rights in the Occupied Palestinian Territory, including East Jerusalem, and adopted resolution 6/19, in which it called upon Israel, the occupying Power, to respect the religious and cultural rights enumerated in the Universal Declaration of Human Rights in the Occupied Palestinian Territory, including East Jerusalem, and to allow Palestinian worshippers unfettered access to their religious sites. The High Commissioner was requested to report to the Council on the implementation of that resolution at its next session.

5. At its sixth special session, held on 23 and 24 January 2008, the Council addressed the human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory, including Gaza and the West Bank town of Nablus. At the conclusion of the session, the Council adopted resolution S-6/1, in which it expressed grave concern at the repeated Israeli military attacks carried out in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, which

have resulted in loss of life and injuries among Palestinian civilians, including women and children. The Council called for urgent international action to put an immediate end to the grave violations committed by the occupying Power, Israel, in the Occupied Palestinian Territory, including the series of incessant and repeated Israeli military attacks and incursions therein and the siege of the occupied Gaza Strip, and demanded that the occupying Power, Israel, immediately lift the siege it has imposed on the occupied Gaza Strip, restore continued supply of fuel, food and medicine and reopen the border crossings. The Council also called for an immediate protection of Palestinian civilians in the Occupied Palestinian Territory, in compliance with human rights law and international humanitarian law.

6. At its seventh session, the Council adopted resolution 7/17 on the right of the Palestinian people to self-determination, reaffirming the inalienable, permanent and unqualified right of the Palestinian people to self-determination and its support for the solution of two States living side by side in peace and security, Palestine and Israel. The Council further decided to continue the consideration of this question at its session in March 2009.

7. In her report, submitted to the Council pursuant to its resolution S-6/1 (A/HRC/7/76), the High Commissioner for Human Rights called on all the parties (Israel, the Palestinian Authority and the de facto government of the Gaza Strip under the effective control of Hamas) to establish accountability mechanisms providing for law-based, independent, transparent and accessible investigations of alleged breaches of international human rights and humanitarian law, in accordance with their respective obligations, and to provide redress to victims where violations of law were found to have occurred.

8. At the same session, the Council also considered the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination (A/HRC/7/7) and adopted resolution 7/21 on the mandate of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

9. On 27 and 28 May 2008, a high-level fact-finding mission, comprising Archbishop Desmond Tutu of South Africa and Professor Christine Chinkin of the United Kingdom of Great Britain and Northern Ireland, visited the town of Beit Hanoun during its visit to the occupied Palestinian territory of Gaza. The mission was established by the Council in November 2006, under its resolution S-3/1, following the Israeli attack resulting in the deaths of 19 Palestinian civilians, including seven children. The final report of the high-level fact-finding mission will be submitted to the Council at its next session, in September 2008.

10. On 16 June 2008, at its eighth session, the Council considered the report of the former Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (A/HRC/7/17) along with the report of the High Commissioner on the progress made with regard to the implementation of Council resolutions 7/1 (A/HRC/8/17) and 6/19 (A/HRC/8/18). The Council then held an interactive dialogue with the newly appointed Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Mr. Richard Falk, which was followed by a general debate on the human rights situation in Palestine and other occupied Arab territories. The first report of the High Commissioner focused on the closure of Gaza and its impact on the enjoyment of human rights. It

described the effects of violence against the civilian population and other human rights violations. The second report focused on the question of access of Palestinians to religious sites in the Occupied Palestinian Territories. It described how obstacles to the freedom of movement, such as the closure of Gaza, the permit system and the separation wall, hamper such access.

III. Concluding observations of the Human Rights Committee

11. The principle of self-determination is enshrined in Article 1, paragraph 2, of the Charter of the United Nations. Article 1, paragraph 1, of the International Covenant on Civil and Political Rights and article 1, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights affirm the right of all peoples to self-determination. Article 1, paragraph 3, of the International Covenant on Civil and Political Rights and article 1, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights impose upon States parties, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, the obligation to promote the realization of that right and to respect it, in conformity with the provisions of the Charter.

12. During the reporting period, the Human Rights Committee addressed several issues related to the right to self-determination in its consideration of the periodic reports of States parties submitted under article 40 of the International Covenant on Civil and Political Rights. A summary of these observations is presented below.

13. In its concluding observations on Chile, adopted on 26 March 2007, the Human Rights Committee, while noting the intention expressed by the State party to give constitutional recognition to indigenous peoples, expressed concern about a variety of reports consistently indicating that some claims by indigenous peoples, the Mapuche in particular, have not been met, and about the slow progress made in demarcating indigenous lands, which has caused social tensions. The Committee was dismayed to learn that "ancestral lands" are still threatened by forestry expansion and megaprojects in infrastructure and energy (articles 1 and 27).

14. The Committee recommended that the State party: (a) make every possible effort to ensure that negotiations with indigenous communities lead to a solution that respects land rights of these communities in accordance with article 1, paragraph 2, and article 27 of the International Covenant on Civil and Political Rights and to expedite procedures to recognize such ancestral lands; (b) amend its Act No. 18.314 to bring it into line with article 27 of the Covenant and revise any sectoral legislation that may contravene rights spelled out in it; and (c) consult indigenous communities before granting licences for economic exploitation of disputed lands and guarantee that in no case will exploitation violate rights recognized in the Covenant (CCPR/C/CHL/CO/5, para. 19).

15. In its concluding observations on the Sudan adopted on 26 July 2007, the Human Rights Committee noted the efforts made by the State party on the issue of self-determination in Southern Sudan, in particular article 222 of the Interim National Constitution, which provides for a referendum on self-determination. The Committee regretted the lack of information from the State party concerning the human rights situation in Southern Sudan (CCPR/C/SDN/CO/3, para. 7).

16. The Human Rights Committee recommended that the State party deploy all the human and material resources required to hold, within the prescribed time limit, the referendum provided for by the Interim National Constitution. The Committee also recommended that the State party should ensure that its next periodic report covers the human rights situation throughout the Sudan, including Southern Sudan (CCPR/C/SDN/CO/3, para. 7).